

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jenzo Duque	Team: Squad #8	CCRB Case #: 201808258	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 09/27/2018 5:30 PM	Location of Incident: Intersection of Aqueduct Avenue & West 192nd Street	Precinct: 52	18 Mo. SOL 3/27/2020	EO SOL 11/11/2020	
Date/Time CV Reported Thu, 09/27/2018 5:43 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 10/05/2018 10:53 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Frank Aliffi	00234	939856	052 PCT
2. POM Christophe Montera	07819	961961	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Tooma	24945	958125	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Frank Aliffi	Force: Seregeant Frank Aliffi hit § 87(2)(b) against a vehicle.	
B.POM Christophe Montera	Force: Police Officer Christopher Montera hit § 87(2)(b) against a vehicle.	
C.SGT Frank Aliffi	Abuse: Sergeant Frank Aliffi threatened § 87(2)(b) with the use of force.	
D.SGT Frank Aliffi	Abuse: Sergeant Frank Aliffi seized § 87(2)(b) s property.	
E.SGT Frank Aliffi	Abuse: Sergeant Frank Aliffi threatened to arrest § 87(2)(b) § 87(2)(b)	

### Case Summary

§ 87(2)(b) filed this complaint with IAB, under IAB Log #2018-38344, on September 27, 2018. IAB referred the complaint to the CCRB on October 5, 2018.

On September 27, 2018, at approximately 5:30 p.m., at the intersection of Aqueduct Avenue and West 192<sup>nd</sup> Street in the Bronx, Sergeant Frank Aliffi, Police Officer Christopher Montera, and Police Officer Daniel Tooma of the 52<sup>nd</sup> Precinct stopped § 87(2)(b)'s sedan for reckless driving. The officers learned that § 87(2)(b) was driving the sedan without a license and that the sedan was not registered under his name. The officers then arrested § 87(2)(b). Sgt. Aliffi and PO Montera began handcuffing § 87(2)(b) and neither officer hit § 87(2)(b) against a vehicle (**Allegation A-B: Force** – § 87(2)(g)). PO Montera handcuffed § 87(2)(b)'s left hand, but § 87(2)(b) tensed his right hand and pulled it away from the officers. Sgt. Aliffi then threatened to use force against § 87(2)(b) (**Allegation C: Abuse of Authority** – § 87(2)(b)). The officers successfully handcuffed § 87(2)(b) and PO Montera placed him in the rear of their police vehicle. Upon arresting § 87(2)(b), Sgt. Aliffi determined the officers would seize the sedan he had been operating, but § 87(2)(b)'s relative who stood in the immediate vicinity, objected and stood in between the officers and the sedan (**Allegation E: Abuse of Authority** – § 87(2)(g)). The officers commanded § 87(2)(b) to step away from the sedan, and after explaining to him why they would seize the sedan, Sgt. Aliffi threatened to arrest § 87(2)(b) if he did not back away from it (**Allegation F: Abuse of Authority** – § 87(2)(g)).

There were nine body-worn camera videos for this incident. Two videos were from PO Montera, 03:18 long (Board Review 01) and 13:19 long (Board Review 02). Two videos were from PO Tooma, 05:29 (Board Review 03) and 11:40 long (Board Review 04). Two videos were from Sgt. Aliffi, 08:01 long (Board Review 05) and 00:50 long (Board Review 06). One video was from Police Officer Idelissa Lluveres of the Bronx Strategic Resource Group, 02:51 long (Board Review 07). One video was from Police Officer John Weiglein of the 52<sup>nd</sup> Precinct, 02:32 long (Board Review 08). One video was from Police Officer Martin Verendia of the 52<sup>nd</sup> Precinct, 02:43 long (Board Review 09). § 87(2)(b) also provided two cell phone videos, 00:21 long (Board Review 21) and 00:17 long (Board Review 22).

§ 87(2)(b) was arrested as a result of this incident.

### Findings and Recommendations

**Allegation (A) Force: Sergeant Frank Aliffi hit § 87(2)(b) against a vehicle.**

**Allegation (B) Force: Police Officer Christopher Montera hit § 87(2)(b) against a vehicle.**

It is undisputed that on September 27, 2018, at approximately 5:30 p.m., the intersection of Aqueduct Avenue and West 192<sup>nd</sup> Street and in the Bronx, Sgt. Aliffi and PO Montera did not intentionally hit § 87(2)(b) against a vehicle.

Neither § 87(2)(b) nor § 87(2)(b) could be reached to provide statements regarding this incident. The investigation proceeded based on body-worn camera and cell phone video footage.

In Sgt. Aliffi's statement to the CCRB (Board Review 10), Sgt. Aliffi, PO Montera, and PO Tooma observed a sedan make a U-turn and cross the double-yellow lines dividing traffic on University Avenue. The officers then followed the sedan and decided to pull it over for reckless driving. The sedan parked at the intersection of Aqueduct Avenue and West 192<sup>nd</sup> Street. The officers turned on their vehicle lights and parked beside the sedan. § 87(2)(b) then exited the sedan and locked the driver's door. § 87(2)(b) was the sole occupant of the vehicle. All three officers exited the police vehicle and approached the sedan. All three officers spoke with § 87(2)(b) stating they had observed him make a U-turn and driving recklessly. § 87(2)(b) denied driving the vehicle, stating it was already parked. The officers requested § 87(2)(b)'s license and he did not provide it to them upon request. Sgt. Aliffi did not recall how many times the officers requested § 87(2)(b)'s license. § 87(2)(b) then began screaming and directing profanity at the officers, which Sgt. Aliffi interpreted as threatening behavior and creating a hostile environment. § 87(2)(b) did not do anything physically that caused Sgt. Aliffi any concern. § 87(2)(b) stood beside the sedan and did not pace or move around.

A crowd began forming in the immediate vicinity, drawn by § 87(2)(b)'s statements. Sgt. Aliffi estimated approximately four to six people stopped to observe what was transpiring. The four to six people directed profanity at the officers and moved close to them. No one in the crowd attempted to physically intervene in what was transpiring. The officers then determined § 87(2)(b) was under arrest. The officers attempted to place § 87(2)(b)'s arms behind his back and § 87(2)(b) tensed his arms, extending them by his sides. PO Tooma and PO Montera grabbed § 87(2)(b)'s arms and placed him in handcuffs, while Sgt. Aliffi guided them and ensured none of their equipment fell to the ground. However, upon further questioning, Sgt. Aliffi clarified that he physically guided the officers and placed a hand on § 87(2)(b). Sgt. Aliffi did not recall having any further involvement in handcuffing § 87(2)(b).

§ 87(2)(b) moved his body around to evade the officers' grasp while PO Tooma and PO Montera handcuffed him. Sgt. Aliffi estimated the officers apprehended § 87(2)(b) within a few seconds. Sgt. Aliffi acknowledged that § 87(2)(b) may have contacted the sedan in the process of his physical apprehension, but stated no officer struck him against a vehicle intentionally or pushed him against a vehicle purposefully. Any contact § 87(2)(b) had with the sedan was incidental to his apprehension because he stood beside the sedan. St. Aliffi estimated § 87(2)(b) stood inches away from the sedan. Sgt. Aliffi denied hitting § 87(2)(b) against a vehicle.

§ 87(2)(g) After all three officers exited their police vehicle and approached the sedan, PO Tooma knocked on the driver's window and § 87(2)(b) did not respond. § 87(2)(b) continued to park the sedan and upon parking, exited the vehicle. When the officers requested § 87(2)(b)'s license, he stated he did not have a license and had only moved the sedan for a friend. The officers then determined § 87(2)(b) was under arrest for operating a vehicle without a license and stated such to him. PO Montera stated the crowd that formed in response to § 87(2)(b)'s yelling recorded video footage from their cell phones, yelled at the officers, and moved close to the officers. The officers commanded individuals within the crowd to step back and allow the officers to do their jobs. § 87(2)(b) stated he would go with the officers to the precinct, but wanted to remove items on his person first. § 87(2)(b) began removing items from his pockets to give to individuals in the immediate vicinity.

PO Montera then placed a handcuff on § 87(2)(b)'s left hand, but § 87(2)(b) would not give the officers his right arm and continued to enter his pockets. After PO Montera handcuffed § 87(2)(b) Castiilo's left hand, § 87(2)(b) backed away from the sedan, and both PO Montera and Sgt. Aliffi pushed § 87(2)(b) against the sedan to gain control of his right hand. § 87(2)(b) tensed his right arm and moved it away from the officers towards his pockets. PO Montera did not know why § 87(2)(b) removed items from his pockets during the process of his handcuffing, and PO Montera had no concern regarding the items § 87(2)(b) was removing. PO Montera and Sgt. Aliffi then pulled § 87(2)(b)'s right arm behind his back and handcuffed him. The officers commanded § 87(2)(b) to stop resisting. PO Tooma stood in the immediate vicinity, but was not involved in physically apprehending § 87(2)(b). PO Montera denied witnessing Sgt. Aliffi hit § 87(2)(b) against a vehicle. PO Montera denied hitting § 87(2)(b) against a vehicle.

§ 87(2)(g)

In PO Montera's body-worn camera video footage (Board Review 12), PO Montera stood to § 87(2)(b)'s left while Sgt. Aliffi stood to his right as the officers began to physically apprehend him. § 87(2)(b) reached his arms across the sedan in front of him to hand items to an individual. PO Montera then handcuffed § 87(2)(b)'s left hand as Sgt. Aliffi grabbed his right arm. § 87(2)(b)'s clothing obscured PO Montera's camera for approximately 20 seconds. An officer stated, "I'm gonna tase you, I'm gonna tase you, dude," to § 87(2)(b). The officers then successfully handcuffed § 87(2)(b) and pulled him away from the sedan by his arms. PO Montera then placed § 87(2)(b) in the rear of the police vehicle. At no point did the video footage depict any officer hitting § 87(2)(b) against a vehicle intentionally during his physical apprehension.

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Sergeant Frank Aliffi threatened § 87(2)(b) with the use of force.**

It is undisputed that in the process of handcuffing § 87(2)(b) Sgt. Aliffi threatened § 87(2)(b) with the use of force.

In Sgt. Aliffi's statement to the CCRB (Board Review 10), the officers attempted to place § 87(2)(b)'s arms behind his back and § 87(2)(b) tensed his arms, extending them by his sides. PO Tooma and PO Montera grabbed § 87(2)(b)'s arms and placed him in handcuffs, while Sgt. Aliffi guided them and ensured none of their equipment fell to the ground. However, upon further questioning, Sgt. Aliffi clarified that he physically guided the officers and placed a hand on § 87(2)(b). Sgt. Aliffi did not recall having any further involvement in handcuffing § 87(2)(b). Sgt. Aliffi estimated the officers apprehended § 87(2)(b) within a few seconds.

Sgt. Aliffi was shown PO Montera's body-worn camera video footage for this incident (Board Review 01). When asked if he recognized the voice heard stating, "I'm gonna tase you, I'm gonna tase you, dude," in the video footage, Sgt. Aliffi stated one of the officers may have stated such to stop § 87(2)(b) from behaving erratically. Sgt. Aliffi did not recall which

officer made the statement, stating the voice may have been his or another officer's. Sgt. Aliffi stated an officer could have made the statement to gain § 87(2)(b)'s compliance and make him stop resisting arresting through a less lethal application of force. Sgt. Aliffi was equipped with a taser on the incident date. Sgt. Aliffi did not recall if PO Montera or PO Tooma were equipped with tasers on the incident date. Sgt. Aliffi had no independent recollection of the statements captured in the video footage.

§ 87(2)(g) PO Montera placed a handcuff on § 87(2)(b)'s left hand, but § 87(2)(b) would not give the officers his right arm and continued to enter his pockets. After PO Montera handcuffed § 87(2)(b)'s left hand, § 87(2)(b) backed away from the sedan, and both PO Montera and Sgt. Aliffi pushed § 87(2)(b) against the sedan to gain control of his right hand. § 87(2)(b) tensed his right arm and moved it away from the officers towards his pockets. PO Montera did not know why § 87(2)(b) removed items from his pockets during the process of his handcuffing, and PO Montera had no concern regarding the items § 87(2)(b) was removing. PO Montera and Sgt. Aliffi then pulled § 87(2)(b)'s right arm behind his back and handcuffed him. The officers commanded § 87(2)(b) to stop resisting. PO Tooma stood in the immediate vicinity, but was not involved in physically apprehending § 87(2)(b).

PO Montera was shown his body-worn camera video footage for this incident (Board Review 01). When asked if he recognized the voice heard stating, "I'm gonna tase you, I'm gonna tase you, dude," in the video footage, PO Montera stated the voice belonged to Sgt. Aliffi. PO Montera had no independent recollection of this statement being made prior to seeing the video footage. None of the officers used a taser in the incident. PO Montera did not know why Sgt. Aliffi stated he would use a taser against § 87(2)(b).

Patrol Guide Procedure 221-02 regarding the Use of Force (Board Review 15), defines Active Resistance as, "Physically evasive movements to defeat a member of service's control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or to prevent being taken into or retained in custody." Subsection 10-C states, "If the use of de-escalation and conflict negotiation techniques fail to persuade an uncooperative subject, the supervisor/members of service present should, if appropriate and consistent with officer safety...advise the offender that physical force or other devices (e.g. O.C. pepper spray, shield, baton/asp, etc.) will be used to handcuff/restrain him/her before applying such force, if appropriate."

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Sergeant Frank Aliffi seized § 87(2)(b) property.**

**Allegation (E) Abuse of Authority: Sergeant Frank Aliffi threatened to arrest § 87(2)(b).**

It is undisputed that after arresting § 87(2)(b) Sgt. Aliffi seized the sedan he had been driving. It is also undisputed that upon seizing the vehicle, Sgt. Aliffi threatened to arrest § 87(2)(b) § 87(2)(b)

§ 87(2)(b) could not be reached to provide statements regarding this incident.

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In Sgt. Aliffi's statement to the CCRB (Board Review 10), the officers checked the sedan license plate and learned that the sedan was not registered to § 87(2)(b). However, upon further questioning, Sgt. Aliffi clarified that he did not recall at what point in time the officers checked the sedan's license plate, as he sat in the rear of the police vehicle, and PO Tooma or PO Montera had access to the license-plate-check system in the front seats. When the officers successfully handcuffed § 87(2)(b) individuals within the crowd moved towards the officers and Sgt. Aliffi issued commands to them to back away. Sgt. Aliffi did not recall any other statements he or other officers made to members in the crowd. Sgt. Aliffi denied hearing any officer threatening to arrest § 87(2)(b) Sgt. Aliffi denied threatening to arrest § 87(2)(b) § 87(2)(b)

§ 87(2)(g) PO Montera did not recall Sgt. Aliffi threatening to arrest § 87(2)(b) PO Montera denied threatening to arrest § 87(2)(b)

In PO Tooma's body-worn camera video footage (Board Review 14), § 87(2)(b) asked PO Tooma for the sedan's keys and PO Tooma responded by asking § 87(2)(b) who the sedan belonged to. § 87(2)(b) stated that he had a license, and PO Tooma stated what mattered was who the sedan belonged to, as § 87(2)(b) had been driving it. Sgt. Aliffi then commanded § 87(2)(b) to step away from the sedan. § 87(2)(b) and § 87(2)(b) both stated that they would get the owner of the sedan. § 87(2)(b) asked for the keys again and Sgt. Aliffi stated he would not give him the keys. § 87(2)(b) asked the officers why they would not give him the keys, and PO Tooma stated because § 87(2)(b) was not the owner of the sedan, § 87(2)(b) had been driving the sedan, and he did not know who § 87(2)(b) was. § 87(2)(b) stated he wanted § 87(2)(b) to have the key, and § 87(2)(b) then told the officers he had § 87(2)(b)'s consent to take the keys. PO Tooma then began explaining what the officers had observed and why they stopped § 87(2)(b) Sgt. Aliffi then stated, "Back away from the car—if you don't back away in two minutes, you're gonna get arrested too," to § 87(2)(b) Both Sgt. Aliffi and PO Tooma continued to command § 87(2)(b) to back away from the sedan.

Patrol Guide Procedure 208-26 regarding Forfeiture Proceedings for Seized Property (Board Review 16) Subsection A-3 states, "Property, including vehicles or money, for which forfeiture proceedings maybe be instituted: vehicles...where the vehicle is unlawfully obtained or stolen and the true owner cannot be identified." Subsection 1-B also states, "Property will normally be seized for forfeiture in connection with a felony or misdemeanor arrest but may also be held for investigation, under certain circumstances, without an arrest, e.g., if the true owner is not yet determined or arrest of the true owner is contemplated."

N.Y. Penal Law § 195.05 (Consol.) regarding Obstructing governmental administration in the second degree (Board Review 17), states, "A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any

independently unlawful act, or by means of interfering, whether or not physical force is involved.”

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 18).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 19).
- Sgt. Aliffi has been a member of service for 12 years and has been a subject in seven CCRB complaints and 26 allegations, none of which were substantiated. § 87(2)(g)
- PO Montera has been a member of service for two years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- Given that the neither § 87(2)(b) nor § 87(2)(b) could be reached to provide statements for this incident, mediation was not offered to either in this complaint.
- As of January 3, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 21).
- § 87(2)(b), § 87(2)(c)

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date